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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,324	10/12/2001	Hiroyoshi Yamaguchi	AB-1167 US	9209

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EXAMINER

BURNHAM, SARAH C

ART UNIT PAPER NUMBER

3636

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/976,324	<b>Applicant(s)</b> YAMAGUCHI ET AL.	
	<b>Examiner</b> Sarah C. Burnham	<b>Art Unit</b> 3636	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hara (5,125,472). Hara discloses a vehicle occupant restraint system comprising: a pair of fixed support members (14); an arm (20) pivotally attached (as best seen in Figure 4) to a front end (unlabeled) of fixed support members (14); a cross member (16)(17) extending between the free ends (20b) of the arm (20) and, a power unit (26)(30)(31), as best seen in Figure 13, provided on the side of support member (14). Wherein said cross member (16)(17) comprises a pipe member (17) having a flattened surface (16) for engaging the vehicle occupant. Furthermore, pipe member (17) has a depending flange (unlabeled) in the form of a small lip extending from flattened surface (16) in parallel with pipe member (17) as best seen in Figure 14.
3. Claims 1-2, and 6-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamaguchi et al. (6,113,185)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Yamaguchi et al. discloses a vehicle occupant restraint system comprising (15):  
a pair of fixed support members (20)(25) attached to either side (13)(14) of a seat frame (12);

an arm (22)(27) pivotally attached at pivots (21) and (26) to a front end of support members (20) and (25);

a cross member (30) extending between free ends (unlabeled) of said arms (22)(27);

a power unit (Figure 5);

wherein said cross member (30) comprises a pipe member (36)(35) including a feature (170) "such as holes or notches" (column 13, lines 38-39) allowing for deformation.

4. Claims 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamaguchi et al. (6,450,573).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Yamaguchi discloses a vehicle occupant restraint system comprising: a pair of fixed support members (2) attached to a front side of a seat frame (1); an arm (3) pivotally attached a pivot point (6) to a front end (unlabeled) of fixed support members (2); a cross member (4) extending between the free ends (unlabeled) of the arms (3) and, a power unit (Figure 3) provided on the side of support member (2) as best seen in Figure 2. Wherein said cross member (4)(21) comprises a pipe member (4) having a flattened surface (unlabeled), as best seen at the ends of pipe member (4) in Figure 5, for engaging the vehicle occupant. Furthermore, pipe member (4) has a depending flange (21) extending in parallel with pipe member (4) as best seen in Figure 4.

#### ***Allowable Subject Matter***

5. Claim 10 is allowed.

#### ***Response to Amendment***

6. The amendment filed on February 12, 2004 has been considered in its entirety. The remaining issues are detailed in the above sections.

The declaration filed under 37 C.F.R. 1.132 declares that Hiroyoshi Yamaguchi is the sole inventor of all subject matter disclosed in the 6,113,185 patent that is recited in

claims 1-2 and 6-7 of the instant application and is the sole inventor of all subject matter disclosed in patent number 6,450,573 that is recited in claims 8-9 of the instant application. There is nothing stating that the other joint inventors of patent numbers 6,113,185 and 6,450,573 agree to the fact that Hiroyoshi Yamaguchi is the sole inventor of the subject matter in question. Furthermore, the joint inventors of the instant application agree to the fact that Hiroyoshi Yamaguchi is the sole inventor of the claimed subject matter. It still appears that the 3 patents in question all have different inventive entities.

Applicant argues that Hara does not disclose or suggest a pipe member having a flattened wall portion. The Examiner maintains that figure 4 reveals a pipe member (17) having a flattened wall portion (16). Because the pipe member (17) and the flattened wall portion (16) are attached together the Examiner believe that the pipe member (17) is considered "to have" the flattened wall portion (16).

Furthermore, Applicant argues that the shaft (17) is used as a pivot shaft and not adapted to be actuated upward. The Examiner agrees that shaft (17) is not actuated upward, however, the flattened wall portion (16), which is part of the cross member, is actuated upward as seen in Figures 2 and 3. Therefore the cross member (17)(16) as a whole is pivoted upward.

### ***Conclusion***

7. This is a continuation of applicant's earlier Application No. 09/976324. All claims are drawn to the same invention claimed in the earlier application and could have been

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finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB  
March 24, 2004

  
Peter M. Cuomo  
Supervisory Patent Examiner  
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